A

Public Prosecutor v Zolzaya Natsagroj

B COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B-05–145–06 OF 2014
AZIAH ALI, AHMADI ASNAWI, ZAMANI A RAHIM JJCA
21 MAY 2015

C *Criminal Procedure — Appeal — Appeal by prosecution — Offence of trafficking in dangerous drugs — Drugs found concealed — Accused person denied knowledge of drugs — Presumption of trafficking based on weight of drugs — Whether rightly invoked — Whether presumption of trafficking rebutted — Whether trial judge erred in acquitting and discharging accused — Inconsistency between cautioned statement and oral testimony — Whether considered by trial judge — Dangerous Drugs Act 1952, s 39B(1)(a)*

D

A double-storey house was raided and in a room at the upper floor of the house, the respondent and the second accused were arrested. PW4 found what he E suspected to be heroin in a bag ('P67') found inside another bag ('P13'). The respondent was jointly charged with the second accused for trafficking in 278.6g heroin and 85.0g monoacetylmorphines, an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the DDA'). Having found that the F prosecution had failed to prove a prima facie case against the second accused and the latter was acquitted and discharged without being called to enter defence. The presumption of trafficking under s 37(da) of the DDA was invoked against the respondent. In her defence, the respondent contended a Mongolian lady ('Khaliun') had given her P67 and asked her to keep it for a few G days. The respondent had put P67 into P13 and stated that she did not know the contents of P67 and had assumed that P67 contained clothes. The trial judge found that the respondent's defence had raised a reasonable doubt and acquitted and discharged the respondent. Hence, the present appeal by the prosecution. The prosecution submitted that in the cautioned statement, the H respondent had stated that she had put P67, which contained the drugs, into P13 when she heard the knocking on the door. However, in her oral testimony, the respondent said that had put the P67 into P13 because she wanted to clean up her room since the second accused was coming. It was further submitted that the respondent's attempt at changing her cautioned statement had I decreased the evidentiary value of the statement. In addition to that, no particulars of Khaliun was given in the respondent's cautioned statement.

Held, allowing the appeal; setting aside the decision of the High Court:

(1) At the material time the respondent had actual possession, custody and control of the P67. The respondent was the sole tenant of the room and nobody else had the key to the room. The bag containing the drugs was found inside the respondent's bag concealed from view and the concealment of the bag supported the inference of knowledge of the contents of the bag. The respondent is guilty of wilful blindness. It was improbable that the respondent could not have known that P67 may not contain clothes during the time when P67 was in her possession. A reasonable person's suspicions would have been aroused that P67 may not contain clothes (see paras 21 & 32).

(2) The trial judge had erred in accepting the respondent's oral explanation. The trial judge failed to properly address his mind to the probability that what the respondent had stated in her cautioned statement may be a true reflection of events that had occurred and, that the explanation given by the respondent in her testimony was probably an afterthought to suit her defence of no knowledge. Had the trial judge properly address his mind to this issue, the trial judge would have entertained reservations about the credibility of the respondent's oral explanation. The events as narrated by the respondent in her cautioned statement ought to be preferred compared to her oral explanation (see para 26).

(3) On a totality of the evidence, the respondent failed to raise a reasonable doubt on the prosecution's case and had also failed to rebut, on a balance of probabilities, the presumption of trafficking under s 37(da) of the DDA. The balance of evidence was against the acquittal of the respondent. Even if Khaliun was involved in drug related activities, this did not in any way detract from the fact that the respondent had actual possession, custody and control over the drugs at the time of her arrest. The quantity of drugs triggered the presumption of trafficking under s 37(da) of the DDA (see paras 34–35).

[Bahasa Malaysia summary

Sebuah rumah dua tingkat telah diserbu dan dalam sebuah bilik di tingkat atas rumah, responden dan tertuduh kedua ditangkap. PW4 mendapati apa yang disyaki sebagai dadah jenis heroin di dalam beg ('P67') yang dijumpai dalam satu beg lain ('P13'). Responden didakwa bersama tertuduh kedua kerana mengedar heroin monoacetylmorphines sebanyak 278.6g dan 85.0g, satu kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'). Setelah mendapati bahawa pihak pendakwaan telah gagal membuktikan kes prima facie terhadap tertuduh kedua dan tertuduh kedua telah dilepaskan dan dibebaskan tanpa dipanggil untuk membela diri. Anggapan pengedaran di bawah s 37(da) ADB digunakan terhadap responden. Dalam pembelaannya, responden berhujah seorang wanita Mongolia ('Khaliun') telah memberikannya P67 dan memintanya untuk menyimpannya untuk beberapa hari. Responden telah meletakkan P67 ke dalam P13 dan menyatakan bahawa

dia tidak tahu kandungan P67 dan hanya mengandaikan yang P67 mengandungi pakaian. Hakim perbicaraan mendapati pihak pembelaan responden berjaya menimbulkan keraguan yang munasabah dan melepaskan dan membebaskan responden. Oleh itu, rayuan ini dibuat oleh pihak pendakwaan. Pendakwa raya berhujah bahawa dalam kenyataan beramaran, responden menyatakan bahawa dia telah meletakkan P67, yang mengandungi dadah tersebut, ke dalam P13 apabila dia mendengar ketukan di pintu. Walau bagaimanapun, dalam keterangan lisannya, responden mengatakan bahawa dia telah meletakkan P67 ke dalam P13 kerana mahu membersihkan bilik memandangkan tertuduh kedua akan datang menemuinya. Pendakwa raya seterusnya berhujah bahawa percubaan responden untuk mengubah kenyataan beramarannya telah menurunkan nilai keterangan kenyataan tersebut. Selain itu, tiada butiran Khaliun yang diberikan dalam kenyataan beramaran responden.

Diputuskan, membenarkan rayuan; mengetepikan keputusan Mahkamah Tinggi:

(1) Pada semua masa material responden mempunyai milikan sebenar, jagaan dan kawalan P67 tersebut. Responden adalah penyewa tunggal bilik tersebut dan orang lain tidak mempunyai kunci bilik tersebut. Beg yang mengandungi dadah ditemui di dalam beg responden yang ditutup daripada penglihatan dan penyembunyian beg tersebut menyokong inferens pengetahuan mengenai kandungan beg. Responden bersalah disebabkan kebutaan yang disengajakan. Adalah mustahil bahawa responden tidak mengetahui bahawa P67 tidak mengandungi pakaian semasa P67 dalam milikannya. Orang yang munasabah akan mengesyaki bahawa P67 tidak mengandungi pakaian (lihat perenggan 21 & 32).

(2) Hakim perbicaraan terkhilaf dalam menerima penjelasan lisan responden. Hakim perbicaraan gagal untuk memfokuskan fikirannya kepada kebarangkalian bahawa apa dinyatakan responden dalam kenyataan beramarannya mungkin gambaran sebenar peristiwa-peristiwa yang telah berlaku dan, bahawa penjelasan yang diberikan oleh responden dalam keterangannya mungkin satu pemikiran selepas untuk memenuhi pembelaannya iaitu tidak mengetahui. Sekiranya hakim perbicaraan dengan betul memberi tumpuan kepada isu ini, hakim tersebut mungkin akan mendengar dan meneliti kredibiliti penjelasan lisan responden. Peristiwa-peristiwa yang diceritakan oleh responden dalam kenyataan beramarannya patut diutamakan berbanding penjelasan lisannya (lihat perenggan 26).

(3) Pada keseluruhan bukti, responden gagal untuk menimbulkan keraguan munasabah terhadap kes pendakwaan dan juga telah gagal mematahkan, atas imbangan kebarangkalian, anggapan pengedaran di bawah s 37(da) ADB. Imbangan keterangan adalah terhadap pembebasan responden.

Walaupun sekiranya Khaliun terlibat dalam aktiviti-aktiviti yang berkaitan dengan dadah, ini bukan dalam apa jua cara menjejaskan fakta bahawa responden mempunyai milikan sebenar, jagaan dan kawalan ke atas dadah semasa dia ditangkap. Kuantiti dadah mencetuskan anggapan pengedaran di bawah s 37(da) ADB (lihat perenggan 34–35).]]

Notes

For a case on appeal by prosecution, see 5(1) *Mallal's Digest* (5th Ed, 2015) para 492.

Cases referred to

Hoh Bon Tong v PP [2010] 5 CLJ 240, CA (refd)
Kumaran a/l Sappani v PP [2012] 6 MLJ 153; [2011] 3 CLJ 251, FC (refd)
Ubaka v PP [1995] 1 SLR 267, CA (refd)

Legislation referred to

Dangerous Drugs Act 1952 s 37(da)

Appeal from: Criminal Trial No 45A-152–08 of 2013 (High Court, Shah Alam)

Muhamad Yasser bin Mohd Nasri (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.
LA Gomes (The Law Offices of LA Gomes and Meor Shaazizi & Assoc) for the respondent.

Aziah Ali JCA:

INTRODUCTION

[1] The respondent, Zolzaya Natsagroj, a Mongolian national, was charged together with one Barsbaatar Ganbold, who is also a Mongolian national, with having a common intention of trafficking in dangerous drugs. The charge against them reads:

That you in pursuance of a common intention on 26th January 2013, at about 0130 am, at No. 71, Jalan SS 15/20 Subang Jaya, in the district of Petaling, in the state of Selangor, did traffic in a dangerous drugs, to wit 278.6 grams Heroin and 85.0 grams Monoacetylmorphines and thereby committed an offence under Section 39B(1)(a) of the Dangerous Drugs Act 1952 and punishable under Section 39B(2) of the same Act read together with section 34 of the Penal Code.

THE PROSECUTION'S CASE

[2] On 26 January 2013 at about 1.30am, Insp Ihwan Hilmi bin Ismail ('PW4') led a police party consisting of seven police personnel to conduct a raid

on a double storey house at No 71, Jalan SS 15/20 Subang Jaya. The raid was conducted pursuant to information received about drug related activities involving Mongolians at the said address.

[3] PW4 managed to gain entry into the house by unlocking the main wooden door through a window next to the main door. There were five rooms on the ground floor and four rooms on the upper floor all occupied by tenants. PW4 checked all the rooms. At the last room on the upper floor, PW4 knocked on the door, and when there was no response after the third time, PW4 kicked the door open.

[4] Upon entering the room PW4 saw two persons, a male (identified as the second accused) and a female (identified as the respondent).

[5] PW4 checked the room and seized a number of items. Among the items seized by PW4 that are relevant to the charge against the respondent were the following:

(a) a red and white coloured luggage bag bearing the brand name 'One Polar' which was placed on top of another bag which PW4 found in a corner of the room;

(b) inside this 'One Polar' bag was a white paper bag bearing the brand name 'Lacoste';

(c) inside the 'Lacoste' bag was a white plastic bag bearing the brand name 'C&E';

(d) inside the 'C&E' bag was a transparent plastic bag, and

(e) inside the transparent plastic bag was another transparent plastic bag containing what PW4 suspected to be heroin.

[6] PW4 marked these exhibits as follows:

(a) 'A1' – the red and white coloured luggage bag bearing the brand name 'One Polar';

(b) 'A2' – the white paper bag bearing the brand name 'Lacoste' found inside the luggage bag marked as 'A1';

(c) 'A3' – the transparent plastic bag bearing the brand name 'C&E' found inside the bag marked as 'A2';

(d) 'A4' – the transparent plastic bag found inside the bag marked as 'A3';

(e) 'A4' – the transparent plastic bag found inside the bag marked as 'A3'; and

(f) 'A5' – the transparent plastic bag containing what PW4 suspected to be heroin found inside the bag marked as 'A4'.

[7] PW4 then took both the respondent and the second accused together with the exhibits seized to the Subang Jaya district police headquarters. PW4 prepared a search list ('exh P3') and he handed both the accused persons and the exhibits to the investigating officer ('IO') Insp Rozlia bt Rozali ('PW3') who acknowledged receipt ('exh P4').

[8] PW3 marked the exhibits received from PW4 as follows:

(a) 'A1' as 'R1' (tendered as exh P13);

(b) 'A2' as 'R2' (tendered as exh P67);

(c) 'A3' as 'R3' (tendered as exh P68);

(d) 'A4' as 'R4' (tendered as exh P69); and

(e) 'A5' as 'R5' (tendered as exh P70).

[9] Apart from these markings, PW3 had also put her signature and date on the exhibits. These exhibits were kept in a locked steel cupboard in her room. Only she had the key and access to the cupboard. On 5 February 2013 PW3 handed the drug exhibits packed in a box that she had marked as 'RO' to the chemist, Norhaya bt Jaafar ('PW1') for analysis ('exh P8'). PW1 issued an acknowledgment receipt ('exh P9').

[10] PW1 issued a report in which she confirmed that the drug exhibits contained 278.6g heroin and 85.0g monoacetylmorphines ('exh P10').

[11] Investigations revealed that both the respondent and the second accused were students. PW3 confirmed that the second accused did not have a key to the respondent's room.

[12] The defence tendered through PW3 the respondent's cautioned statement which was recorded on 29 January 2013 ('exh D76'). In the cautioned statement the respondent stated amongst others as follows:

> ... Then, suddenly someone knocked the door and I was shock and afraid. They broken my door and came into my home. I put Khaliun's items inside my red bag. The police just keep check my home and found that it was drug. My boyfriend and me both of us shocked lot and we didn't know about that.

FINDINGS OF THE TRIAL JUDGE

[13] The trial judge accepted the testimony of both PW3 and PW4 relating to the raid and arrest of the respondent and the recovery of the drug exhibits. In finding that the prosecution has established a prima facie case against the respondent, His Lordship said as follows:

> The facts which could be gleaned from the evidence of SP3 and SP4 was that the room from which the drugs (sic) was rented by the first accused. Further the bag from which the package of drug was found belonged to the first accused alone. The second accused was merely a weekend visitor to the room to spend time with the first accused who was his girlfriend.
>
> It was established that the second accused lived elsewhere and nothing incriminating was found there. The cautioned statement of the first accused tendered by the defence counsel showed that the second accused had no knowledge of the drugs found in the bag.
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> From the cautioned statement of the first accused it could be also determined that at the material time the plastic bag in which the drug package was found was under her custody and control. The first accused stated that the plastic bag was given to her by a person called Khailun.
>
> Custody or control is insufficient to prove possession as the mental element of knowledge is necessary. In this case I inferred knowledge against the first accused taking into account her own statement that indicated that she had placed the plastic bag in her bag when the police came. To me her conduct showed that she took steps to hide the plastic bag.
>
> Apart from possession the amount of drug was substantial to indicate trafficking and in this case the prosecution could rely on the presumption of trafficking under s 37(da) of the Dangerous Drugs Act 1950.
>
> There was sufficient and prima facie evidence against the first accused and I therefore called for her defence.

[14] With respect to the second accused, the trial judge found that the prosecution had failed to link the second accused to the drugs found and therefore was unable to prove a prima facie case against the second accused. The second accused was acquitted and discharged without calling for his defence. No appeal was lodged against the acquittal and discharge of the second accused.

THE DEFENCE

[15] Essentially the respondent's defence was that she had no knowledge of the drugs. Her evidence may be summarised as follows:

(a) the respondent got to know one Mongolian lady by the name of Khaliun through her other friends from Mongolia approximately eight months prior to the incident;

(b) she had rented the room in which the drugs were recovered since February 2011;

(c) all her expenses in Malaysia were paid for by her father. Her parents work as engineers;

(d) Khaliun had visited her room twice and her boyfriend, the second accused would come during weekends;

(e) she had known the second accused for about one month;

(f) on 24 January 2013 at about 11am–12noon, Khaliun had called her and asked her to come down as Khaliun was waiting for her;

(g) she went downstairs to meet Khaliun who had come by taxi;

(h) Khaliun gave her the 'Lacoste' bag ('exh P67') and asked her to keep it for a few days and she would come to collect it later;

(i) she asked Khaliun what was inside the bag but Khaliun was in a hurry and said she would tell her later;

(j) the respondent assumed that the bag contained clothes because on two previous occasions Khaliun had asked the respondent to keep her clothes because Khaliun's boyfriend will get angry when Khaliun buys too many clothes;

(k) the respondent did not open the bag to see what was inside because the bag did not belong to her and she felt it was impolite to open the bag;

(l) inside her room she placed exh P67 on top of her bag ('exh P13');

(m) at about 2pm the second accused called her to tell her that he was coming and would be arriving in 20 minutes;

(n) she hurriedly cleaned her room and put the bag exh P67 into the bag exh P13;

(o) she then went out to have lunch with the second accused and after that both went back to her room and they did not leave the room until she left for her class the next morning. She returned to her room at about 11am;

(p) at about 3pm Khaliun called her to tell her that she was hungry. Since the respondent was cooking Mongolian food, she packed some for Khaliun who came by to pick up the food and left;

(q) later at about 9pm Khaliun called her. Since the respondent was cooking, Khaliun came to her room for dinner;

(r) after dinner, at about 10pm she and the second accused sent Khaliun to the taxi station. Then she and the second accused returned to her room;

(s) at about 1am while she and the second accused were watching movies in the room, there was a knock on the door;

(t) she asked who it was and the answer was 'I am your friend' and when she asked who, the answer was 'I am Jeff'. Before she could answer, the door was kicked open. She remained on the bed;

(u) the police searched her room and found the bag exh P67 inside the bag exh P13;

(v) the police opened the bag exh P67 but the respondent said she did not know what was inside this bag;

(w) the police then handcuffed her and the second accused and they were taken in separate cars to the second accused's apartment in Sri Petaling; and

(x) from Sri Petaling they were taken to the police station.

FINDINGS OF THE TRIAL JUDGE

[16] At the end of the defence case, the trial judge found that the defence had raised a reasonable doubt on the ingredient of possession. This is what the trial judge said:

> At the end of the prosecution's case I inferred the guilty conduct of the first accused from the fact that she had placed the plastic bag in her bag on learning of the police at her door. I accepted her explanation in defence that she had placed the plastic bag in her bag not to hide from the police but to clear up the room on learning that her boyfriend was coming to her room.

[17] Further, the trial judge considered the evidence adduced by the defence and found that the respondent was an outstanding student, she had performed consistently well in her studies, she came from a reputable family, there was no indication that she had financial difficulties, she was active in cultural activities and she had planned her future. Therefore the trial judge was of the view that the respondent would not jeopardise her future and do something foolish like selling drugs. The trial judge stated that 'I sensed a ring of truth in her testimony that she was unaware of the drugs in the plastic bag'. According to the trial judge, it is safer to acquit and discharge the respondent and uphold the principle that it is better to acquit ten guilty people than convict one innocent person.

THE APPEAL

[18] Before us, the learned deputy public prosecutor ('DPP') raised the issue of knowledge and submitted that the trial judge had failed to address his mind to the inconsistency between the respondent's cautioned statement and her oral testimony.

[19] In the cautioned statement the respondent had stated that she had put the plastic bag containing the drugs inside her bag when she heard the knocking on the door. In her oral testimony she said that she had put the plastic bag into her bag because she wanted to clean up her room since the second accused was coming.

[20] Learned DPP submitted that the respondent's attempt at changing her cautioned statement has decreased the evidentiary value of the statement (*Kumaran a/l Sappani v Public Prosecutor* [2012] 6 MLJ 153; [2011] 3 CLJ 251). Learned defence counsel submitted that the prosecution relied too much on the words in the cautioned statement but the trial judge had accepted her explanation.

OUR DECISION

[21] The prosecution evidence show that the bag containing the drugs was found inside the respondent's bag concealed from view. The respondent had admitted putting the drugs in her bag. The respondent was the sole tenant of the room. Nobody else had the key to the room. Therefore at the material time the respondent had actual possession, custody and control of the bag exh P67. The concealment of the bag supports the inference of knowledge of the contents of the bag. Based on the quantity and weight of the drugs, His Lordship had rightly invoked the presumption under s 37(da) of the Act. We find that the trial judge had correctly ordered the respondent to enter her defence.

[22] In her defence the respondent denied knowledge of the drugs. She testified that she had placed the bag of drugs into her bag when her boyfriend informed her that he was coming. According to her she had made a mistake in her cautioned statement.

[23] We agree with the DPP that there was an apparent inconsistency between the respondent's cautioned statement and her oral testimony, regarding her explanation as to when she put the bag of drugs inside her bag. The trial judge accepted the respondent's oral explanation and found that the respondent had raised a doubt on the ingredient of knowledge. However His Lordship gave no reason why he preferred the oral explanation over the

cautioned statement. In the circumstances, it is necessary to peruse the respondent's testimony relating to the cautioned statement.

[24] In examination-in-chief this was what she had stated (pp 153–154 appeal record):

> S: I am referring to D76. Is that your caution statement can you see in the file, D76? Is that the caution statement that you gave to one Insp Mohd Saiful Rizal?
>
> J: Yes
>
> S: He took down the statement in English?
>
> J: Yes. This is one which I type for him.
>
> S: You type?
>
> J: Yes, I type because he cannot type.
>
> S: You type this caution statement also.
>
> J: Yes
>
> S: Does he give you the question and all that?
>
> J: Yes, she give me the question and then I type the answer.
>
> S: So you type the question and answer lah?
>
> J: Yes

[25] The cautioned statement was recorded on 29 January 2013, ie approximately three days after her arrest. Given the proximity of time between the date of her arrest and the date when the cautioned statement was recorded, and the fact that the answers in the cautioned statement were typed by the respondent herself, it would be reasonable to expect that her recollection of events on 26 January 2013 as recorded in her cautioned statement would still be fresh in her mind.

[26] We were of the view that the trial judge had failed to properly address his mind to the probability that what the respondent had stated in her cautioned statement may be a true reflection of events that had occurred on 26 January 2013 and, that the explanation that she had given in her testimony was probably an afterthought to suit her defence of no knowledge. Had the trial judge properly addressed his mind to this issue, then His Lordship would have entertained reservations about the credibility of her oral explanation. In our considered opinion the events as narrated by the respondent in her cautioned statement ought to be preferred compared to her oral explanation. We were of the view that the trial judge had erred in accepting the respondent's oral

explanation. We were inclined to accept the version in her cautioned statement, that she put the bag of drugs into her own bag upon hearing the knocking on the door.

[27] The learned DPP had submitted that the respondent is guilty of wilful blindness because the Lacoste bag was not sealed and the respondent could have opened it to check the contents, but she chose not do to so.

[28] In the case of *Hoh Bon Tong v Public Prosecutor* [2010] 5 CLJ 240, this court through the judgment of Abdul Malik Ishak JCA had occasion to state as follows:

> The defence of innocent carrier must necessarily bring into the picture the concept of wilful blindness. And according to Yong Pung How CJ (Singapore) in *Public Prosecutor v Hla Win* at p 438, 'the concept of wilful blindness qualifies the requirement of knowledge'. And his Lordship continued further by saying (at the same page):
>
> As Professor Glanville Williams aptly remarked in his Textbook on Criminal Law, at p 125:
>
> ... the strict requirement of knowledge is qualified by the doctrine of wilful blindness. This is meant to deal with those whose philosophy is: 'Where ignorance is bliss, 'tis folly to be wise.' To argue away inconvenient truths is a human failing. If a person deliberately 'shuts his eyes' to the obvious, because he doesn't want to know,' he is taken to know.
>
> Continuing at the same page, his Lordship said:
>
> In *Ubaka v PP* [1995] 1 SLR 267, the principles laid down in *Warner v Metropolitan Police Commissioner* [1968] 2 All ER 356; [1968] 2 WLR 1303 and modified in *Tan Ah Tee v Public Prosecutor* [1980] 1 MLJ 49; [1978] 1 LNS 193 were applied by the trial judge. In its grounds of judgment, this court quoted the following passage by the trial judge:
>
> Ignorance is a defence when there is no reason for suspicion and no right and opportunity of examination, and ignorance simpliciter is not enough.

[29] According to the respondent, she had received the bag from Khaliun at about noon on 24 January 2013. The next day ie 25 January 2013 she had met Khailun twice, ie at 3pm when Khaliun came to collect some Mongolian food from her, and that night when Khaliun came to her room for dinner. Khaliun had stayed for one hour.

[30] The raid took place in the early hours of 26 January 2013. Therefore from the time that the respondent took the bag from Khaliun till the time of raid, the bag had been in the respondent's possession for approximately two days. The respondent had ample opportunity to ask Khaliun about the contents of the bag, yet she did not.

[31] We were of the view that there were sufficient reasons to cause the respondent to be suspicious about the contents of the plastic bag. Firstly, the weight of the bag itself. According to PW1 the chemist, the gross weight of the drugs was 1024.4g. Surely a bag the size of the 'Lacoste' bag containing clothes only would not weigh one kilogram? Secondly, the shape of the contents of the bag. The drugs were packed in the manner as can be seen in photograph number 13 at p 294 appeal record. Since the layers of bags were made of paper and plastic, the shape of the bag's contents can be felt even without opening the bag. It is reasonable to expect that a bagful of clothes would have felt different from a bag containing substances which were described by the chemist in her report as 'bahan ketulan dan serbuk'.

[32] Further, the 'Lacoste' bag was a normal shopping bag with no lock or zip (see photograph at p 295 appeal record). There was no hindrance to visually see its contents. Even a cursory peek into the bag would have enabled the respondent to see that there were plastic bags and no clothes inside. Given all these factors, in our opinion it was improbable that the respondent could not have known that the bag may not contain clothes during the time when the bag was in her possession. A reasonable person's suspicions would have been aroused that the bag may not contain clothes. It was mere folly on her part not to examine the bag. Ignorance is a defence when there is no reason for suspicion and no right and opportunity of examination, and ignorance simpliciter is not enough (see *Ubaka v Public Prosecutor* [1995] 1 SLR 267 at p 273). We agree with the DPP that the respondent is guilty of wilful blindness.

[33] As for the person named Khaliun, in cross-examination PW3 had stated that no particulars of Khaliun was given by the respondent in her cautioned statement. PW3 agreed that earlier on the same night of the respondent's arrest, there was a Mongolian named Khaliun who had been arrested elsewhere for drug trafficking activities. Since Khaliun was mentioned by the respondent in her cautioned statement, PW3 did make inquiries. Her inquiries showed that this person denied any knowledge about the drugs in the respondent's case. In cross-examination, PW3 stated as follows (pp 66–67 appeal record):

> S: Makna apa yang kamu diberitahu sebenarnya kamu tidak siasat langsung.
>
> J: Saya siasat YA.
>
> S: Macam mana you siasat, tolong beritahu?
>
> J: Saya soal siasat Khaliun itu. Dia tak tahu pasal OKT ini.
>
> Mkh: Kamu ada soal siasat Khaliun?
>
> J: Ada. Dan dia menafikannya.

S: Adakah Khaliun mengaku kepada Insp. Saiful dia ada beri satu bungkusan kepada OKT 1?

J: Saya tak ingat, soal siasat saya dengan Khaliun, dia cakap dia tiada beri apa-apa. Bukan pasal caution.

[34] We were of the view that notwithstanding the allegations made in respect of Khaliun, and even if the person Khaliun was involved in drug related activities, this did not in any way detract from the fact that the respondent had actual possession, custody and control over the drugs at the time of her arrest. The quantity of drugs triggered the presumption of trafficking under s 37(da) of the Act.

CONCLUSION

[35] On a totality of the evidence we find that the respondent had failed to raise a reasonable doubt on the prosecution case and had also failed to rebut, on a balance of probabilities, the presumption of trafficking under s 37(da) of the Act. We find that the balance of evidence was against the acquittal of the respondent. We therefore allowed the appeal and set aside the decision of the High Court. We found the respondent guilty and we convicted her and sentenced her to death.

Appeal allowed; decision of the High Court set aside.

Reported by Afiq Mohamad Noor